

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 11

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL W. GILPATRICK

Appeal No. 1997-4392
Application No. 08/639,515

ON BRIEF

Before FRANKFORT, NASE and JENNIFER D. BAHR, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's refusal to allow claims 12-16 in the final rejection (Paper No. 7, mailed February 7, 1997). Claims 1-11 have been canceled.

Appellant's invention relates to a method of producing a fabric 10 made of a plurality of core and effect yarns 54 with loops 53. A plurality of core and effect yarns 54 are maintained spaced from

one another via a guide plate 16 forming a sheet which is run through an adhesive applicator 29 such that a thin layer of adhesive is applied to the yarn and spans the space between the yarns so that some of the loops of one yarn adhere to loops in an adjacent yarn. The fabric is allowed to set and is directed to a take up roll 32 to be used in applications where it is desired to use a hook and loop type connection.

The prior art references of record relied upon by the examiner in rejecting claims 12-16 are:

Altman	3,266,841	Aug. 16, 1966
Eschenbach	4,305,245	Dec. 15, 1981
Shimizu	4,732,631	Mar. 22, 1988

Claims 12, 13 and 15¹ stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Altman in view of Eschenbach.

Claims 14 and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Altman in view of Eschenbach as applied to claims 12, 13 and 15 above, and optionally further in view of

¹ Although the final rejection lists claims 13-16 as being rejected based on Altman in view of Eschenbach and optionally further in view of Shimizu, it is clear from paragraph 6 of the final rejection, the examiner's answer and appellant's brief that all claims were intended to be rejected in the final rejection. Further, the rejections set forth in the answer (Paper No. 10, pp. 5-9) breaks up the rejection with claims 12, 13 and 15 being unpatentable over Altman in view of Eschenbach, and claims 14 and 16 being unpatentable over Altman in view of Eschenbach and optionally further in view of Shimizu. Although this breakdown of claims is different from the final rejection, we find that the examiner has merely gone into further detail in explaining the "optionally further in view of" statement. Since the scope of the rejection is essentially unchanged from the final rejection, we will consider the more detailed explanation of the rejections as set forth in the answer.

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Shimizu.

Rather than attempt to reiterate the examiner's full statement with regard to the above noted rejections and conflicting viewpoints advanced by the examiner and the appellant regarding the rejections, we make reference to the examiner's answer (Paper No. 10, mailed June 25, 1997) for the reasoning in support of the rejections, and to appellant's brief (Paper No.9, filed March 24, 1997) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellant's specification and claims, to the applied prior art references, and to the respective positions as set forth by the appellant and the examiner.

With regard to the examiner's 35 U.S.C. § 103 rejection of independent claim 12 based on Altman in view of Eschenbach, we find that the examiner has failed to established a prima facie case of obviousness.

Altman discloses a protective cover 10 for a headrest portion of a seat back 12, the cover having at least one thread-like strip 16 of looped construction attached to sheet material 11 and designed to be used in a hook and loop type connection. It is disclosed that the threadlike strip is attached to the sheet material "in any suitable manner" (col. 2, line 12), and more particularly by "zigzag

stitches” that bridge the thread 16.

Eschenbach discloses a method of forming twisted slub yarn comprising a core yarn 10 and an effect yarn 12. To accomplish this, the path of the effect yarn 12 being fed into an air jet 14 is lengthened by a path deviator assembly 50, thereby reducing the linear velocity of the feed of the effect yarn into the air jet 14. When a solenoid valve 74 is intermittently deactivated, the effect yarn is released from the expanded position and the excess yarn is sucked into the air jet 14, wherein the filaments of the effect yarn 12 are allowed to curl into loopy yarn and intermingle with the filaments of the core yarn 10.

It is the examiner’s position that Altman discloses securing loopy yarn to a sheet to form a female connector member, but that Altman does not disclose adhesively securing the loopy yarn onto the sheet. It is also the examiner’s position (answer, pg. 5) that it would have been obvious to use adhesive to secure the loopy yarn 16 of Altman onto the sheet 11 since, a) Altman discloses (col. 2, lines 11-12) that the loopy yarn may be “secured to material 11 in any suitable manner,” b) securing loopy material to a sheet is “old” in the art, and c) adhesive securing is simpler and more effective than stitching. The examiner further explains (answer, pg. 5) that since there is suggestion in Altman to provide more than one loopy yarn on the sheet:

In securing the plurality of loopy threads onto the sheet, one would have to either sequentially or simultaneously bond the loopy threads onto the sheet. Although of [sic] these methods would have been [sic] obvious choice in the art in securing

loopy yarns to a sheet in the process of making the female connector sheet of Altman, it would appear that simultaneous bonding of the loopy yarns would be preferable since it is more efficient and less time-consuming. Furthermore, there are also only two logical and convenient ways to adhesively bond the plurality of loopy yarns simultaneously onto the sheet.

The first method would be to use a sheet precoated with an adhesive which is now simply referred to as an adhesive applicator . . .

The second method is to directly coat the bonding side of the loopy yarns with adhesive, such as spraying or hot melt preformed adhesive film, prior to bonding the loopy yarns to the sheet. Hence, this process also would intrinsically form a thin layer of adhesive on the bonding side of the loopy yarns so that the adhesive also would spans [sic] the space between the threads. (Answer, pg. 6).

The examiner, however, points out that Altman is silent on a method of making the loopy yarn. The examiner applies Eschenbach to teach that it is common knowledge in the art to produce a loopy yarn by feeding the effect yarn at a greater rate than that of the core yarn.

We do not agree with the examiner's reasoning for the rejection of appellant's independent claim 12 as set forth above. First, we find that none of the applied references actually disclose or

suggest a method of producing a fabric with loops as claimed in appellant's claim 12. Neither Altman nor Eschenbach disclose maintaining a spacing between adjacent core and effect

type yarns and running a plurality of such yarns "in a sheet" past an adhesive applicator thereby placing a thin layer of adhesive on the yarns so that the adhesive spans the space between the yarns, and some of the loops from one yarn adhere to loops of the next adjacent yarn. Altman's mere suggestion of utilizing any suitable securing method to attach the loopy yarn 16 to the sheet 11 clearly does not provide such a teaching. Not only has the examiner speculated from this very general statement that the use of an adhesive would have been obvious, but we find that the examiner further used impermissible hindsight, speculation and conjecture to further suggest application of any such adhesive via "spraying or [using] hot melt preform adhesive film" in an attempt to arrive at the claimed method limitation of running a sheet of the core and effect type yarn past an adhesive applicator such that the adhesive spans the space between the yarns and some of the loops from one yarn adhere to loops of the next adjacent yarn.

The examiner also "acknowledge[s] that the present invention does not require a sheet (backing) as taught by Altman" (answer, pg 8), but that the invention does not exclude the use of such a

backing and states that “the presently recited claims read on the process of making a female connector sheet taught by Altman modified by Eschenbach where loopy yarns spaced from each other are adhesively secured to a sheet” (answer, pg. 8). We find that this reasoning also

lacks the specifically claimed step of running a plurality of yarns in a sheet past an adhesive applicator so that said adhesive spans the space between adjacent yarns such that the loops of the yarns adhere to each other. Merely using adhesive for attaching the thread-like strips 16 to the sheet 11 of Altman may have been an obvious alternative to the stitching disclosed in Altman, but for the examiner to further speculate as to how the adhesive is applied without a specific teaching or suggestion in the prior art, we feel, requires the use of impermissible hindsight to arrive at the method of appellant’s claim 12.

In summary, we cannot sustain the examiner’s rejection of claim 12 under 35 U.S.C. § 103(a) as being unpatentable over Altman in view of Eschenbach. Since dependent claims 13 and 15 include all of the limitations of claim 12, we will also not sustain the examiner's rejection of these claims under 35 U.S.C. § 103(a)

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We have additionally reviewed the patent to Shimizu, but find nothing in this reference which provides a teaching to overcome the deficiencies we have noted above in the basic combination of Altman and Eschenbach. Accordingly, we cannot sustain the examiner's rejection of dependent claims 14 and 16, which depend from claim 12.

In light of the forgoing, the decision of the examiner to reject claims 12-16 under 35 U.S.C. § 103(a) is reversed.

REVERSED

CHARLES E. FRANKFORT)	
Administrative Patent Judge))	
)	
)	BOARD OF PATENT
JEFFREY V. NASE)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES	

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JENNIFER D. BAHR
Administrative Patent Judge)

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